

ORDER NO. 1550

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators
China Post Group – United States Postal Service
Multi-Product Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2013-2

NOTICE AND ORDER CONCERNING TYPE 2 RATE ADJUSTMENT AND
CHINA POST 2013 NEGOTIATED SERVICE AGREEMENT

(Issued November 20, 2012)

I. INTRODUCTION

Background. On November 15, 2012, the Postal Service filed a notice, pursuant to 39 CFR 3010.40 *et seq.*, announcing a Type 2 rate adjustment in conjunction with a new negotiated service agreement.¹ The Notice concerns the inbound portion of a Multi-Product Bilateral Agreement with China Post Group (Agreement), which the Postal

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 15, 2012 (Notice).

Service seeks to include within the existing Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. Notice at 1.

Contract history and scope. The Agreement is a successor to the existing China Post 2011 Agreement, which was included within Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 by operation of Order No. 871. *Id.* at 2. Rates under the Agreement are intended to take effect January 1, 2013 following expiration, on December 31, 2012, of rates now in effect under the China Post 2011 Agreement. *Id.* at 3. The Agreement pertains only to inbound market dominant rates; rates paid by the Postal Service to China Post Group for outbound delivery of Postal Service products in China are not included. *Id.* at 6.

Applicable rules. Subpart D of 39 CFR 3010 addresses rate adjustments for negotiated service agreements (Type 2 adjustments). The rules in this subpart specify, among other things, the scope and nature of the data, information, and explanations the Postal Service is to provide in a notice of Type 2 rate adjustment; the action the Commission is to take upon receipt of such Notice; and the nature of Commission review. See 39 CFR 3010.42 through 3010.44.

II. NOTICE OF FILING

Compliance with filing requirements. The Postal Service's filing consists of the Notice, two attachments, and a public Excel file. Attachment 1 to the Notice is an application for non-public treatment of material filed under seal with the Commission (Application).² This material consists of the unredacted text of the Agreement and unredacted supporting financial documentation. *Id.* at 2. Attachment 2 is a redacted copy of the China Post 2013 Agreement. The public Excel file is a redacted version of the supporting financial documentation. *Id.*

The Postal Service identifies January 1, 2013 as the effective date; asserts that the requisite 45 days' advance notice is being provided; and identifies a Postal Service

² The Application was filed pursuant to 39 CFR 3007.21. See Notice at 12.

official as a contact for further information. *Id.* at 3. It identifies the parties to the Agreement as the United States Postal Service and China Post Group, the postal operator for China. *Id.* at 4. It states that the Agreement includes delivery confirmation scanning for Letter Post small packets, a service also included in the China Post 2010 and China Post 2011 Agreements. *Id.*

The Postal Service states that information about expected financial improvements, costs, volumes, and revenues in financial workpapers has been filed with the Commission under seal. *Id.* It identifies two components of the Agreement that are expected to enhance operational performance: continuation of delivery confirmation service for Letter Post small packets, and use of business rules for international mail settlement. *Id.* at 4-5.

The Postal Service presents several reasons why the instant Agreement will not result in unreasonable harm to the marketplace, including China Post Group's status as the only entity in a position to avail itself of an agreement of this type and the role of the Postal Service and China Post Group as their countries' designated operators for exchange of mail. *Id.* at 5-6.

Rule 3010.43 — data collection plan. Rule 3010.43 requires the Postal Service to submit a detailed data collection plan. In lieu of a special data collection for the Agreement, the Postal Service states that it intends to provide information via the Annual Compliance Report and, pursuant to this alternative, to provide any necessary information about mail flows from China in the course of the annual review process. *Id.* at 7. The Postal Service further asks that the Commission except the Agreement from the separate performance reporting requirement under 39 CFR 3055.3(a)(3). *Id.* It notes that the Commission has granted such exceptions for similar agreements.³

Consistency with applicable statutory criteria. The Postal Service observes that Commission review of a negotiated service agreement addresses three statutory criteria: whether the agreement (1) improves the Postal Service's net financial position

³ The Postal Service cites exceptions granted for the China Post 2010 Agreement, the TNT Agreement, the Hongkong Post 2011 Agreement, and the China Post 2011 Agreement. *Id.*

or enhances the performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly-situated mailers. *Id.* at 7-8 (citing 39 U.S.C. 3622(c)(10)). The Postal Service asserts that it addresses the first two criteria in its Notice and that the third is inapplicable, as there are no similarly situated mailers. *Id.* at 8.

Functional equivalency. The Postal Service asserts that the Agreement is functionally equivalent to the China Post 2010 Agreement, the TNT Agreement, and the Hongkong Post 2011 Agreement because its terms fit within the proposed Mail Classification Schedule language for Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1. *Id.* It therefore states that the Agreement, along with the referenced agreements, conform to a common description. *Id.* at 8-9. The Postal Service also asserts that all four agreements are constructed from a similar template; contain many similar terms and conditions; provide rates for Letter Post tendered to the Postal Service from each foreign operator's territory, along with ancillary services to accompany inbound Letter Post; are with a foreign postal operator; and provide comparable benefits. *Id.* at 9. It therefore claims that because the agreements incorporate the same attributes and methodology, the relevant characteristics are similar, if not the same. *Id.*

The Postal Service acknowledges the existence of differences that distinguish the Agreement from previous agreements; identifies new and revised elements with specificity; and briefly describes the nature of the changes.⁴ *Id.* at 10-12. However, it asserts that the Agreement is nevertheless functionally equivalent to the previously approved agreements referenced in its Notice, and that the differences do not affect either the fundamental service being offered or the fundamental structure of the contracts. *Id.* at 12.

⁴ Affected elements include the first paragraph of the Agreement; Articles 1 and 2; Articles 12, 14, 16, 22 and 23; names of the signatories; and Annexes 1 through 5. Article 2 is a new element addressing Guiding Principles; therefore, successive articles have been renumbered. Changes include, for example, updates to a street address, contact information, websites and label samples; revisions to the stated purposes of the Agreement; and rephrasing of indemnification and liability provisions.

III. NOTICE OF PROCEEDING

The Commission, in conformance with rule 3010.44, hereby establishes Docket No. R2013-2 to consider issues raised by the Notice. The Commission invites public comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3622 and 39 CFR part 3010.40. Comments are due no later than November 29, 2012.⁵

The public portions of the Postal Service's filing have been posted on the Commission's website. They can be accessed at <http://www.prc.gov>. Information on how to obtain access to non-public material is available at 39 CFR 3007.40.

The Commission appoints James F. Callow to serve as Public Representative in this docket.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission establishes Docket No. R2013-2 to consider matters raised by the Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, filed November 15, 2012.
2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments by interested persons in this proceeding are due no later than November 29, 2012.

⁵ To provide sufficient time for interested persons to comment in these proceedings, the Commission finds it appropriate to modify the 10-day comment period specified in 39 CFR 3010.44(a)(5). The modest extension will not prejudice either party to the agreement, given that 45 days' advance notice is provided in Type 2 rate adjustments.

4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Shoshana M. Grove
Secretary